IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/06/2003

CORAM

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.1131 of 2000

Siva Perumal ... Appellant

-Vs-

State: rep. by
Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District. ... Respondent

Criminal Appeal filed against the judgment of conviction and sentence dated 29.08.2000 passed by the II Additional Sessions Judge, Tirunelveli in S.C.No.457 of 1999.

!For Appellant : Mr.R.Neethi Perumal

^For Respondent :Mr.E.Raja, Addl.Public Prosecutor

:JUDGMENT

(JUDGMENT of the Court was delivered by
S.ASHOK KUMAR, J.)
...
The appellant who is the sole accused in S.C. No: 457 of 1999 on the file of the Second Additional Sessions Judge, Tirunelveli, and has been convicted and sentenced to undergo imprisonment for life, on two counts to run concurrently for an offence under Section 302 of I.P. C., has filed this appeal against the conviction.

2. The brief facts of the prosecution case can be stated as follows:
(i) The accused Sivaperumal was a worker in Sun Paper Mills at Cheranmadevi. He married P.W.7 Parvathi about six years back and was having a son Isakiraj aged about four years and a daughter Kanagalakshmi aged about two and half years at the time of occurrence. The accused suspected the fidelity of his wife. Therefore, the accused sent P. W.7, his wife, to her father's house about two years prior to the date of occurrence. On 14.9.98 P.W.7 filed

a complaint at the All Women Police Station, Tirunelveli, requiring the accused to maintain the children. P.W.13 Sub Inspector of Police, All Women Police Station, Tirunelveli, called both the accused and P.W.7 and on her advise the accused took his children on 21.09.98 to be maintained by himself. On 30.08.99, P.W.5, P.W.7 and her relatives approached the accused to take back P.W.7 as she wanted to live with her husband. But the accused refused to take her back. Since the accused did not earn sufficient income to run the family, the relatives started talking ill of him. He became mentally upset and decided to kill his two children and commit suicide.

(ii) On 03.09.99 at about 10.00 a.m. the accused took his children to a tank near the P.W.D. Bungalow and killed them by drowning. But he changed his mind from committing suicide and he went to P.W.1 the Village Administrative Officer and gave Ex. statement at 11.00 a. m. P.W.1 Adi Narayanan, Village Administrative Officer, who recorded the statement of the

accused, also prepared his own report, Ex.P.2, and handed over the accused to P.W.14 the Inspector of Police, Cheranmadevi at 12.15 p.m. on the same day along with Exs.P.1 and P.2.

(iii) P.W.14, Inspector of Police, on receipt of Ex.P.1 along with Ex.P.2 made by the Village Administrative Officer registered a case in Crime No: 127 of 1999 for an offence under Section 302 I.P.C. at 12.15 p.m. and the printed F.I.R. is Ex.P.10. He arrested the accused and sent him for judicial custody. He sent the original F.I.R. through P.W.11 to the Court and copies to his higher officials. He went to the place of occurrence and prepared Ex.P.3 Mahazar in the presence of witness and also drew a sketch Ex.P.11. Between 1.30 p.m. to 2.45 p.m. he conducted inquest on the dead body of the deceased No.1, Isaki Raj and prepared Ex.P.12, Inquest Report. Between 3.00 p.m. to 4.15 p.m. He conducted inquest on the body of deceased No: 2 Kanaga Lakshmi and prepared Ex.P.13 inquest report. He sent the dead bodies with Ex.P.5 requisition through P.W.12 Abraham Joseph Grade-I Constable to Government Hospital, Ambasamudram, for conducting autopsy.

(iv) P.W.8, Dr. Geetha who received the requisition, to conduct post-mortem on the body of deceased No:1, commenced post mortem on 4.9.9 9 at 12 noon. She found the following injuries :

" Frothy & blood discharge from nose & mouth.
ON OPENING : Heart empty, pale. Lungs, Kidney, Liver, Spleen congested. On squeezing water ooze on from lungs. 300 mg. Of partially digested food in stomach. Intestine distended with gas. Bladder empty.

On opening of head. Brain pale. Hyoid bone intact.

Death would have occurred about 26-30 hours prior to post mortem."

She also gave an opinion that the deceased would appear to have died of asphyxia due to drowning. The post-mortem certificate is Ex.P.6.

(v) P.W.9 Dr.Bagyalakshmi commenced post-mortem on the body of the deceased No: 2 Kanagalakshmi at 1.00 p.m. on 4.9.99 and found the following injuries :

" On opening of abdomen and therax. Liver, Spleen, Kidneys are pale. Stomach contains about 400 ml. Of partialy digested food fluid in state. Intestine digested with gas. Heart empty and pale. Lungs pale. On squeezing of lungs water oozes. Hyoid bone intact. Bladder empty. No fracture in skull and spinal celumn. On opening of skull-Brain pale.
Death would appear to have occurred about 26 to 30 hours prior to autopsy."
She gave the opinion that the child died due to asphyxia due to drowning and the death would have occurred about 26 to 30 hours prior to post-mortem. The post-mortem certificate issued by her is Ex.P.7.

(vi) Continuing his investigation, P.W.14 Inspector of Police, examined P.W.13 Maria Rose Manickam, Inspector of Police, All Women Police Station and recorded her statement. He also examined P.Ws. 8 and 9, the doctors, who conducted post-mortems. and obtained the postmortem certificates. He sent the material objects to Court on 20.09.99. He filed a charge sheet against the accused for an offence under Section 302 of I.P.C. (two counts).

3. On behalf of the prosecution P.Ws.1 to 14 were examined, Ex.P.1 to P.13 were filed and M.Os.1 to 7 were marked. On behalf of the accused no witness was examined and no document or material object was marked.

4. When the accused was questioned about the incriminating circumstances appearing in the evidence of prosecution witnesses, he has denied all such circumstances as false except that the children belong to him and has also further stated that four days prior to the occurrence, his wife had taken away the children and in spite of his search for his children he could not get the children and thereafter he was taken by police and was foisted in this case.

5. After considering the oral and documentary evidence, the trial Court convicted the accused and sentenced him as mentioned supra. Hence, this appeal.
6. Thiru.R. Neethiperumal, learned Counsel appearing for the appellant, argued that there are several infirmities in the prosecution case and there is no proof that it was the accused, who killed his own children, and further contended that the extra- judicial confession said to have been made by the accused should not be believed and acted upon.

7. We also heard the learned Additional Public Prosecutor, who vehemently contended that the extra judicial confession made by the accused is voluntary and trust worthy and the evidence on this aspect is cogent, clear and can be acted upon.

8. We gave our anxious consideration on the rival contentions of both the sides and also carefully considered all the materials available on record.

The accused is the father of the deceased two children. P.W.7 is his wife. Through her, two children were born to the accused. Suspecting the fidelity of his wife, P.W.7, the accused has driven her away to her father's house two years prior to the date of occurrence. On 14.09.1998, P.W.7 the wife of the accused filed a complaint at the All Women Police Station, Tirunelveli, requiring the accused to maintain the children who were hitherto with her. On 21.09.19 98, P.W.13 the Inspector of Police, All Women Police Station, Tirunelveli, called both the accused and P.W.7, advised the accused to take the children with him and to maintain the children and the children were entrusted with the accused. On 30.08.1999, P.W.5, P.W.7 and her relatives approached the accused to take back his wife. But, the accused refused to take her back. It is alleged that on 03.09.1999, at 10.00 a.m., the accused took his children to a tank near P.W.D. Bungalow and killed them by drowning them in the water. He also decided to commit suicide, but changed his mind and went to the office of P.W.1, the Village Administrative Officer, where he has given Ex.P.1 statement. Thereafter, a case was registered and investigation was conducted.

9. There is no direct evidence or eye-witness who has seen the accused killing his children by drowning them in the tank. The whole case rests on the circumstantial evidence by way of the extra-judicial confessions made to P.W.1, the Village Administrative Officer and to P.W.3, Navaneethakrishnan and other incriminating circumstances. The occurrence is said to have taken place at 10.00 a.m. on 03.09.1999. At 11.00 a.m., the accused has gone to the office of the Village Administrative Officer and made a confession, which was recorded by P.W.1 . The statement given by the accused is Ex.P.1. P.W.1 has also sent his own report, Ex.P.2, based on which a case was registered at Cheranmahadevi Police Station and investigation was conducted. In Ex.P.1 statement, the accused has categorically stated about the suspicion on his wife regarding her fidelity and sending her to her father's house, about her complaint to the All Women Police Station, about entrusting him the children with his custody, about the demand of the wife on 30.08.1999 to take her back, for which he refused, about his meager income which was not sufficient to meet both the ends, and therefore, at 10.00 a.m. on 03.09.1999, he took his two children to the tank near P.W.D. bungalow and drowned them into the water and also about his changing of mind to commit suicide and if the Police catch him, he will be tortured and out of fear, he has gone to P.W.1 and given the statement. The above statement, Ex.P.1, of the accused contains all the circumstances, which led him to take the extreme decision of killing his two children and committing suicide. P.W.3 is also known to the accused. On 03.09.1999 at about 10.15 a.m., when P.W.3 was proceeding towards Vaitheeswaran Temple, the accused came from the opposite direction, and when P.W.3 questioned the accused from where he is coming, the accused told him that due to his quarrel with his wife, he has drowned his two children in the water. Immediately, P.W.3 has informed P.W.2 Ramamoorthy and

Ramasamy, relatives of the accused. Thus, we could see that there are two extra-judicial confessions made by the accused, one to P.W.1, the Village Administrative Officer, and another to P.W.3, a known person to the accused.

10. The law with regard to the extra-judicial confession is well

settled by a catena of the decisions of the Hon'ble Supreme Court.
11. In Piara Singh v. State of Punjab (AIR 1977 SUPREME COURT 227
4), the Hon'ble Supreme Court has held as under:-
...."Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants."...

12. In State of U.P. vs. M.K. Anthony (AIR 1985 SUPREME COURT 48), where the accused made a statement to a close friend, the Supreme Court has held as under:-
"There is neither any rule nor of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

13. In Baldev Raj v. State of Haryana (AIR 1991 SUPREME COURT 37), it has been held as under:-
"An extra judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness to accept the evidence or not. When the Court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the Courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime."...

14. In a case in which the accused made a confession to a Sarpanch of the Village, the Supreme Court in Dharma vs. Nirmal Singh Bittu (AIR 1996 SUPREME COURT 1136) has held as follows:-
"The trial Court disbelieved the Sarpanch stating that the same did

not inspire confidence because of the reason that the offence having been committed in absolute secrecy, the perpetrator would have been too hesitant to make a confession; more so, when practically all the residents of the village were strongly condemning the rapist/killer of a young girl of the same village. According to us, the trial Court absolutely missed the point that the Sarpanch was approached by the accused to seek protection in as much as police was putting pressure on the members of his family. A Sarpanch being a man of authority it was nothing unnatural in the accused approaching him and apprising him as to what he had done. "

15. In a case in which the accused gave extra judicial confession before the Village Administrative Officer, who recorded the statement of the accused and forwarded to the Police, the Hon'ble Supreme Court in Pakkirisamy v. State of Tamil Nadu (AIR 1998 SUPREME COURT 107) has held as under:-

...."It is well-settled that it is a rule of caution where Court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It is no doubt true that extra-judicial confession by its very nature rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extra-judicial confession is surrounded by suspicious circumstances, needless to state that its credibility become doubtful and consequently it loses its importance. The same principle has been enunciated by this Court in Balvinder Singh v. State of Punjab, 1995 Suppl (4) SCC 259 : (1995 AIR SCW 4555)."...

16. In State of A.P. v. Shaik Mazhar (AIR 2001 SUPREME COURT 2427), it has been held as under:-

..."the law is that an extra-judicial confession, if found reliable can be made the sole basis of conviction. Nonetheless as a proposition of practice and prudence it is advisable that Court may search for assuring circumstances, so that, there can be no room for doubt regarding the reliability of the extra-judicial confession."

17. In SAHOO V. STATE OF U.P. (A.I.R. 1966 Supreme Court 40), it has been held as under:-

"Statement is a genus, admission is the species and confession is the sub-species. A confession is a statement made by an accused admitting his guilt. Communication to another is not an essential ingredient of the concept of "confession". A statement, whether communicated or not, admitting guilt amounts to a confession of guilt."

It has also been held by the Supreme Court as under:-

"Admissions and confessions are exceptions to the hearsay rule. They are placed in the category of relevant evidence by the Evidence Act (Ss.17 to 30), presumably on the ground that, being declarations against the interest of the person making them, they are probably true. The probative value does not depend upon their communication to another, though, just like any other piece of evidence, they can be admitted in evidence only on proof. This proof in the case of oral admission or confession can be offered only by witnesses who

heard the admission or confession, as the case may be."

18. From the decisions cited supra, it is clear that
(i) the witness, who speaks about the extra-judicial confession made to him, need not say the actual words told by the accused with regard to crime, but it is sufficient if the witness could depose about the sum and substance or the meaning of the words told by the accused to the witness;

(ii) it is only a rule of caution to seek corroboration from other sources with regard to the extra-judicial confession made by the accused;

(iii) if the extra-judicial confession, if found reliable, can be made the sole basis of conviction. Nonetheless as a proposition of practice and prudence, it is advisable that the Court may search for assuring circumstances so that there could be no room for doubt regarding the reliability of the extra-judicial confession.

19. As far as this case is concerned, the extra-judicial confessions made by the accused to P.W.1 the Village Administrative Officer and to P.W.3 were not only voluntary, but made immediately after the occurrence. The accused has given reasons for going to P.W.1 the Village Administrative Officer to give a statement. According to him, if he was caught by Police, he would be subjected to torture, and therefore, to save himself, he had gone to P.W.1 the Village Administrative Officer with a hope that he would save him from the torture of the police and therefore, he has given Ex.P.1 statement. His confession to P.W.3 is also believable and natural because after all when P.W.3, a person known to the accused, questioned him where from he is coming, he has simply stated that due to quarrel wit h his wife, he has drowned his children in the water. At the time when the accused took his children to kill them, he himself was in a vexatious mood to commit suicide and at the last minute, after killing his children, he had changed his mind and did not commit suicide. When he was returning from the tank, he has met P.W.3 who questioned him. Therefore, at the time when the accused met P.W.3, the accused should have been in a frustrated and vexatious mood and would have naturally blurred out to P.W.3 about his action.

20. The contents of Ex.P.1 statement given by the accused are corroborated by other circumstances. P.W.7 is his wife and she has deposed about her husband's suspicion over her fidelity towards him, about the accused driving her away with children to her paternal home, about her lodging a complaint at All Women Police Station, Tirunelveli and about the Inspector of Police, All Women Police Station, Tirunelveli, making an enquiry and entrusting the two children in the custody of the accused prior to the occurrence. P.W.5 has deposed about his taking P.W.7 to the house of the accused requesting the accused to take back P.W.7 and live with her, for which, the accused refused. P. W.3 has seen the accused immediately after the occurrence when the accused was coming from the opposite direction and when he questioned, the accused made the extra-judicial confession. P.W.2 has just seen the accused just prior to the occurrence, taking the children at 10.0 0 a.m. towards Bazaar. P.W.2 has also deposed that through P.W.3 he came to know about the death of the children in the tank and when he went to

the tank, he saw the bodies of the children in the tank.

21. When the accused was questioned under Section 313 of the Code of Criminal Procedure, he has stated that four days prior to the occurrence, his wife has taken away the children, and in spite of his search for the children, he could not find the children and thereafter, the police took him to the police station and foisted him in a case. This explanation of the accused when questioned under Section 313 Cr.P.C. is patently false. The accused has driven away his wife with the children about two years prior to the occurrence as seen from the evidence of P.W.5 and P.W.7. P.W.7 has lodged a complaint at All Women Police Station, Tirunelveli on 14.09.1998. On 21.09.1998, P.W.13 the Inspector of Police has conducted an enquiry and entrusted the children in the custody of the accused. If really, the children have been taken by P.W.7 as alleged by the accused, the accused should have lodged a complaint at the Police or gone to the house of P.W.7 and demanded his children. But the accused has not done so. Therefore, the version of the accused that four days prior to the occurrence his children were taken away by his wife, is false. Giving a false explanation with regard to the missing of children by the accused also can be taken as a circumstance against him.

22. Apart from the trustworthy and reliable of the extra-judicial confession, there are other circumstances to corroborate his extrajudicial confession as discussed earlier. Therefore, we do not find any reason to interfere with the judgment of the trial Court. Hence, this appeal deserves to be dismissed and the same is dismissed.

Index:Yes
Internet:Yes

gp/sml

To

1. The Additional sessions Judge, Tirunelveli.
2. do. thro' The Principal Sessions Judge, Tirunelveli
3. The Superintendent, Central Prison, Palayamkottai.
4. The Public Prosecutor, High Court, Madras.
5. The Inspector of Police, Cheranmahadevi Police Station, Cheranmahadevi, Tirunelveli District.
6. The Collector, Tirunelveli.
7. The Director-General of Police, Chennai.

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